

December 16, 2020

Via FOIA Online

National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Re: Freedom of Information Act Request regarding the Bad River Band of the Lake Superior Tribe of Chippewa

Dear FOIA Officer:

This FOIA request is submitted on behalf of Enbridge Energy, L.P. (“Enbridge”) to the Environmental Protection Agency pursuant to the Freedom of Information Act, 5 U.S.C. §552 (“FOIA”), and regulations of the Environmental Protection Agency (“EPA”) at 40 C.F.R. Part 2. For purposes of this request, Enbridge is a “commercial use” requester as that term is defined at 40 C.F.R. §2.107(b)(1). Enbridge is willing to pay search, review, photocopying, and other fees related to responding to this FOIA request up to \$1,500. We request that you contact us first before incurring any charges in excess of that amount.

II. Defined Terms

Please note that, wherever used in this request (including within any of the definitions of terms listed below), the term—

“**Document**” means documents of any and all kinds and formats (whether in hard copy, electronic, or other format or form of storage, whether on a hard drive, shared drive, or other device), including applications, reports (including Discharge Monitoring Reports), affidavits, exhibits, diagrams, drawings, materials, notices, notes, logs, calendar entries, applications, correspondence, memoranda, written communications, text messages, or emails; and when a specific Document is described, the term “Document” includes any and all attachments, exhibits, or appendices to the Document;

“**Bad River Band**” means the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, a federally-recognized Indian tribe; any agency, instrumentality, or utility of the Bad River Band (including the entity known as the Bad River Utilities); and any official, officer, employee, agent or attorney of that tribe and/or of any agency, instrumentality, or utility of that tribe;

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“Bad River Band NPDES Permit” means any NPDES permit issued by the EPA to the Bad River Band, including any current NPDES permit or any permit issued by EPA in the past to the Bad River Band that has expired or that has been renewed or replaced by a new permit.

“EPA” means the Environmental Protection Agency, including Region 5;

“NPDES” means the National Pollutant Discharge Elimination System under § 402 of the Clean Water Act (33 U.S.C. § 1342);

“Region 5” means Region 5 of the EPA; and

“WDNR” means the Wisconsin Department of Natural Resources.

Additionally, please note that—

- (i) unless context clearly indicates otherwise, any word (including a Defined Term) used in the singular in this request includes the plural and the plural includes the singular and references to “and” shall also be construed as “or” and vice versa; and
- (ii) the word “including” shall mean “including but not limited to.”

III. Requested Documents

Please provide copies of the following-described Documents. Unless specified otherwise, each of these requests are seeking documents from January 1, 2013 to present.

1. Any and all Bad River Band NPDES Permits which have been issued, including any associated fact sheets, statements of basis, or any Documents mentioning whether the Bad River Band was, or is, in compliance with such permits.
2. Any and all applications (including draft, supplemental, or amended applications), comments, communications, correspondence, or other Documents referring, concerning or relating to any Bad River Band NPDES Permit.
3. Any and all exhibits, appendices, attachments, or enclosures that were included with or part of any Document requested in paragraph 2, above.
4. Any and all comments, communications, correspondence, or other Documents referring, concerning or relating to whether or not any Bad River Band NPDES Permits should or would be granted and upon what terms or conditions.

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5. Any and all writings, materials, or other Documents submitted, shared or exchanged by or between EPA and: (i) any non-governmental organization, (ii) the Bad River Band, (iii) WDNR, or (iv) any other federal or state regulatory agency) relating to or concerning any variance from applicable water quality standards with respect to any effluent or contaminant related to any Bad River Band NPDES Permits.
6. Any and all communications, correspondence, email, letter, memoranda, or other Documents regarding any action (including any denial, approval, deferral, or other action) taken with respect any Bad River Band NPDES Permits, including any Documents explaining the basis of EPA's decision and/or any documents imposing any limitations or conditions on any such approval, deferral, denial, or other action.
7. Any and all facility inspection reports, compliance reports and/or monitoring data Documents, or any similar Documents, related to any Bad River Band NPDES Permits, including but wastewater discharge monitoring report forms, monthly operation report forms, operation and management plan reports, pollutant minimization program for mercury status reports, mercury operational evaluation report, feasible alternative analysis and status reports, and phosphorous operation evaluation reports.
8. Any and all Documents related to any compliance or lack of compliance with any requirement, condition, or parameter of any Bad River Band NPDES Permit, including any compliance action plan and/or enforcement action or order, the August 2013 Compliance order and/or any Final Administrative Order for Compliance in Case No. 05-2019-0350 (Aug. 28, 2019), and/or any correspondence, report, reply, or other Document submitted by the Bad River Band relating to any EPA compliance or enforcement action (including Case No. 05-2019-0350).
9. Any and all correspondence, communications, or other Documents by or between EPA and any facilities or agency (including Bad River Utilities) operating under any Bad River Band NPDES Permits or that should be operating pursuant to any such permits, including communications and/or correspondence regarding potential, pending, and closed enforcement matters; communications and/or correspondence regarding any monitoring data and/or compliance reports.
10. All public notices, public hearing records, and/or public comments concerning, relating to, and/or regarding any application by Bad River Band an NPDES permit and/or any EPA enforcement action involving the Bad River Band.

If any requested documents, or any portion thereof, are determined to be exempt from release pursuant 5 U.S.C. § 552(b) and 40 C.F.R. § 2.105, please release any non-exempted

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portions and please describe the basis for exemption and identify the documents or portions of documents determined to be exempt.

We respectfully request that EPA respond to this request within 20 business days of the date of this letter pursuant to 40 C.F.R. § 2.104.

Please send all copies of requested documents produced in response to this request to:

Zakariya K. Varshovi
VENABLE LLP
600 Massachusetts Avenue NW
Washington, D.C. 20001
T: 202.344.4215
ZKVarshovi@Venable.com

Thank you, and please do not hesitate to contact me with questions regarding this request.

Sincerely,

/s/ Zak Varshovi
Zak Varshovi